S.B.CIVIL WRIT PETITION NO.1879/1994

Executive Engineer (Construction), RSEB, Bikaner
v.
Mohd. Unis & Anr.

DATE OF ORDER :: 8th May, 2007

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. L.M.Lodha, for the petitioner.
Mr. D.K.Parihar, for the respondents-workman.

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The Labour Court, Bikaner while answering the reference made to it by appropriate government under a notification dated 20.11.1984 in the terms that "whether termination order dated 23.2.1981 passed by the Executive Engineer (Construction), Rajasthan State Electricity Board, Bikaner terminating services of workman Shri Mohd. Unis without holding any inquiry is valid and lawful? If not, then for what relief the workman is entitled?", under the award dated 27.1.1993 held the termination of the workman bad and ordered for his reinstatement in service with back wages, hence this petition for writ is preferred to challenge validity, propriety and correctness of the award referred above.

In brief, facts of the case are that the workman respondent proceeded for a day's leave on Saturday the 14.5.1977 with permission to leave headquarters. After availing leave he did not report to duty on 16.5.1977, therefore, his name was struck

off from the role on 24.1.1978 in accordance with the provisions of Clause 9(H) of the Technical Workmen Service Regulations, 1975 (hereinafter referred to as “the Regulations of 1975”), that provides for automatic cessation of service in the event of unauthorised absence of a workman for consecutive eight days. The respondent workman being aggrieved with his termination from service raised an industrial dispute and on its reference to the Labour Court by the appropriate government he submitted a statement of claim stating therein that on receiving a message about death of his father he proceeded on leave on 14.5.1977, however, prior to that his son met with an accident by a running train on 30.4.1977, therefore, he was hospitalised. It was further stated that the workman applied for extension of leave looking to serious illness of his son who ultimately died on 30.12.1979. After death of his son he reported on duty on 29.2.1989 but he was not allowed to resume the duties. The workman alleged for violation of principles of natural justice while terminating him from service and also violation of provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as “the Act of 1947”).

In written statement the employer defended its action on the count that in the provisions of Clause 9(H) of the Regulations of 1975 there was no option available but to discontinue the workman from

service as he remained absent from duties without sanction. The employer also stated that prior to discontinuing the workman from service a notice was given to him but in pursuant thereto he never responded. The Labour Court after considering the evidence available on record and rival contentions made by the parties during the arguments held that the leave without permission is a misconduct under the Regulations of 1975 and, therefore, no penalty could have been imposed upon the workman without holding an inquiry as required under Clause 22 of the Regulations of 1975. Accordingly, the order of termination was set aside and a direction was given to reinstate the workman with continuity in service and full back wages.

While giving challenge to the award impugned, the contention of counsel for the petitioner employer is that in light of Clause 9(H) of the Regulations of 1975 the option was available to the employer except to cease the service of the respondent workman for remaining absent from duties for a period beyond eight days. According to counsel for the petitioner though in accordance with the provisions of Clause 9(H) of the Regulations of 1975 the service of the workman could have been ceased automatically for remaining absent unauthorisedly but the employer before doing so issued a notice to the workman and, therefore, sufficient compliance of principles of natural justice was also made. In alternative it is also contended by

counsel for the petitioner that the Labour Court erred while awarding full back wages to the workman who remained absent from duties without sanction.

Per contra, according to counsel for the respondent workman no error was committed by the Labour Court Labour Court by holding that an inquiry was necessary in accordance with the Regulations of 1975 before discontinuing the workman from service as the absence from duties without sanction is a misconduct prescribed under Clause 21 of the said Regulations. It was further stated that the powers under Clause 9(H) could have not been exercised by the employer as the provision itself is bad in eye of law. It is pointed out by learned counsel that this Court in the case of The Rajasthan State Electricity Board v. The Judge, Labour Court, Jodhpur and another, reported in 1987(55) Indian Factories and Labour Reports, 867, declared Regulation 21 of the Rajasthan State Electricity Board Employees Service Regulations, 1964 bad in eye of law and struck down the same and the provisions of Clause 9(H) are exactly same to that, therefore, for the reasons given in the case of Rajasthan State Electricity Board (supra) the Clause 9 (H) of the Regulations of 1975 is also bad. With regard to back wages it is contended that the same is a natural consequence to declaration of termination illegal and also a consequent to the order of reinstatement.

Heard counsel for the parties.

Learned Labour Court by the award impugned held that under Clause 21 of the Regulations of 1975 the unauthorised absence is a misconduct and no penalty could have been imposed upon the workman without providing him an opportunity to defend himself. The striking off the name from role of the employer is nothing but removal from service and thus is a major punishment. Such a major punishment could have not been imposed upon the workman without holding a regular inquiry irrespective of availability of the provisions of Clause 9(H) under the Regulations of 1975. This Court too in the case of same employer in RSEB v. Judge, Labour Court, Jodhpur (supra) struck down a provision of similar nature that is Clause 21 of the Regulations of 1964. In view of it I do not find any error in the award impugned holding termination of the workman from service illegal.

I found substance in the contention of learned counsel for the petitioner that the Labour Court should have not allowed full back wages to the workman while making an order of reinstatement as admittedly he remained absent from duties and in that period he did not work. The dispute was referred to the Labour Court for its adjudication in the year 1984 and as such from May, 1981 to April, 1984 no effort

was made by the workman to get his grievance redressed. No wages for the period he did not choose to work at his own could be given to him. Looking to all the facts and circumstances of the case I consider it appropriate to interfere with the award impugned to the extent it relates to grant of full back wages .

Accordingly, this petition for writ is disposed of with a modification in the award to the extent it relates to grant of full back wages to the workman by substituting the same by grant of wages to the workman from the date of award i.e. 27.1.1993.

No order to costs.

(GOVIND MATHUR),J.

Kkm/ps.